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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/578,404      | 08/28/2006  | Paul McBride         |                     | 5198             |

7590 06/01/2007  
John Wiley Horton  
Pennington, Moore, Wilkinson, Bell & Dunbar  
215 S. Monroe St.  
Tallahassee, FL 32301

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| EXAMINER |
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MORAN, KATHERINE M

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3765

|           |               |
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|-----------|---------------|

06/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/578,404

Applicant(s)

MCBRIDE, PAUL

Examiner

Katherine Moran

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's pre-amendment of 4/18/06 has been received. The amendment cancelled claims 10-63 and amended claims 1-9.

#### ***Claim Objections***

1. Claim 8 is objected to because of the following informalities: line 1: there is no claim antecedent for "the device". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Drew (U.S. 4,279,039). Drew discloses the invention as claimed. Drew teaches swimming goggles comprising a unitary face-covering element comprising a visor region formed by a first layer of transparent elastic material 16, eye sealing elements 48 adapted to sealingly engage with a wearer's face, and fastening means 18 which hold the goggles in place. The first layer is elastically deformable with the eye sealing elements to engage the wearer's face since the first layer is formed from polystyrene. A molded nose region (shown but not labeled) is provided to fit around the wearer's nose. The visor region may comprise a single lens region as disclosed in col. 3, lines 8-11 or two

lens regions 24. The fastening means comprises a band 18 which encircles the wearer's head.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drew in view of Douglas (U.S. 3,755,819). Drew discloses the invention substantially as claimed. However, Drew doesn't teach fastening means comprising arms which are releasably fastened together. Douglas teaches arms 24 (col.9, lines 50-54) which may be releasably fastened together via hook or buckle means. Therefore, it would have been obvious to substitute Drew's fastening means with that of Douglas to allow for the goggles to fit a variety of head sizes.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drew in view of Hewitt et al. (Hewitt, U.S. 5,216,759). Drew discloses the invention substantially as claimed. However, Drew doesn't teach the visor region is treated with an anti-fog coating. Hewitt teaches the lens region is treated with an anti-fog coating. Therefore, it would have been obvious to provide Drew's visor region, which includes the lenses, with the anti-fog coating as taught by Hewitt in order to reduce the possibility of foggy lenses.

**Conclusion**

7. The prior art made of record on the attached PTO-892, and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch, may be reached at (571) 272-4996. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

May 25, 2007

A handwritten signature in black ink, appearing to read 'K Moran', with a long horizontal flourish extending to the right.

Katherine Moran

Primary Examiner, AU 3765